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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,691	07/12/2001	Li Li	M4065.0159/P159-A	3130
24998	7590	04/28/2004	EXAMINER	
DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP			BROCK II, PAUL E	
2101 L STREET NW			ART UNIT	
WASHINGTON, DC 20037-1526			PAPER NUMBER	
			2815	

DATE MAILED: 04/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 09/902,691	<b>Applicant(s)</b> LI ET AL.	
	<b>Examiner</b> Paul E Brock II	<b>Art Unit</b> 2815	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 26 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

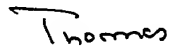
Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 59,60,62,64,66-84,92 and 93.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
**TOM THOMAS**  
 SUPERVISORY PATENT EXAMINER  
 TECHNOLOGY CENTER 2800

Continuation of 5. does NOT place the application in condition for allowance because: With regard to applicant's argument comparing a "chemically engraved plate" of *Hazani v. U.S. Int'l Trade Comm'n*, 126 F.3d 1473, 44 USPQ2d 1358 (Fed. Cir. 1997) and an element being "affixed" to another as in *R2 Medical Systems, Inc. v. Katecho, Inc.*, 931 F.Supp. 1397, 1425-26 (N.D. Ill. 1996) to the claimed product-by-process limitations, it should be noted that applicant's "resulting structures" do not structurally define the claimed invention over the prior art. While there are "defined and distinct" structural characteristics when performing a chemical engraving or an affixing process as in the above mentioned two cases, no comparable "defined and distinct" structural feature result from the product-by-process which applicant claims. For example, applicant has not pointed out how "reduced sidewall striations" structurally define distinct features which are not present in the prior art. Therefore, applicant's arguments are not persuasive, and the rejection is proper.

With regard to applicant's arguments that the "claimed invention relates to an integrated circuit structure with specific structural features obtained by a particular process methodology," it should be noted that "a particular process methodology" does not structurally distinguish over the prior art unless the product resulting from the "a particular process methodology" is different from the prior art. Applicant has not pointed out the structural features of the claimed invention and the prior art are different. Therefore, applicant's arguments are not persuasive, and the rejection is proper.

With regard to applicant's discussion of the process of *Irinoda* on page 8, middle paragraph - page 9, second paragraph, it should be noted that the claims are directed toward a product. Process limitations do not define structural limitations in a device claim. Therefore, applicant's arguments are not persuasive, and the rejection is proper..